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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,502

09/24/2003

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/668,502

Applicant(s)

WU ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-36 and 38-75 is/are pending in the application.
- 4a) Of the above claim(s) 39-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 18-32 and 38 is/are rejected.
- 7) ☒ Claim(s) 13-16 and 33-36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>26 January 2006</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Election/Restriction***

Applicant's election with traverse of inventions I and II in the reply filed on 02 February 2006 is acknowledged. The traversal is on the ground(s) that both groups of inventions are located in class 604. This is not found persuasive because group II not only has an elastic assembly with two separate elastic layers, where group I has only one, the invention of group II requires an inelastic portion between the two separate elastic layers. This structure is not possible with the single elastic layer of group I. Furthermore, group II also requires that one of the two separate elastic layers overlaps a first lateral side of a first waist region, while the second elastic layer overlaps a second lateral side of a second waist region. Group II requires a different search than group I because of these different limitations.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claims 39-75 drawn to an invention nonelected with traverse in applicants remarks dated 02 February 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-12 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Migaku *et al.* (GB 2 118 021 A) in view of VanGompel *et al.* (US 6,336,922 B1).

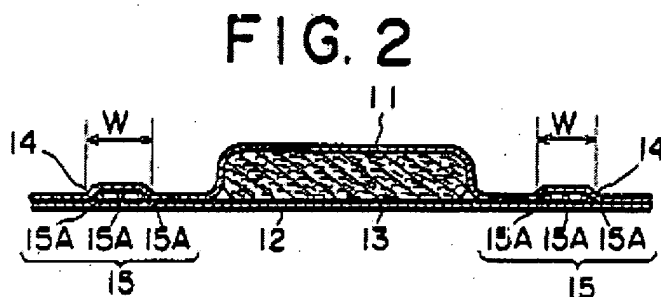
Migaku *et al.* teach an elastic assembly (15) for absorbent garments (10) comprising:

a first carrier layer (11);

a second carrier layer (12);

an elastic layer (15) attached between the first and second carrier layers to impart elasticity to an elasticized portion of the elastic assembly, the elastic layer (15) comprising elastic strands (15A) arranged generally in parallel with one another; and

wherein the first and second carrier layers (11, 12) are attached to one another in the elasticized portion substantially only by a coating of adhesive on the elastic strands (15)(page 4, line 63-page 5, line 20)(see figure 2, below).



Migaku *et al.* fail to teach that both carrier layers (11, 12) are nonwoven.

VanGompel *et al.* teach an absorbent article having an elastic assembly (60) having first and second carrier (80, 82) layers made of gas-permeable nonwoven materials (column 14, lines 13-26).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to make the carrier panels of Migaku *et al.* out of a nonwoven substrate as taught by VanGompel *et al.* in order to provide a extendable material which is breathable.

Migaku *et al.* fail to teach the specific dimensions if the strand decitex (diameter), the strand spacing, elasticized portion thickness, number of corrugations per unit area, assembly width, total number of strands, density of adhesive coating.

Generally, differences in ranges of dimensional parameters will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such test characteristic is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or

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workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). Regarding the instant invention, the benefits of optimizing dimensions of the elastic strands and the elastic portion, as well as the number of elastic strands per area would have been known prior making the device of Migaku *et al.*, making these values result-effective variables. One of ordinary skill in the art would have recognized that optimizing the dimensions and/or density of the elastic materials would provide the desired level of elasticity for user comfort and securement.

Regarding claim 6 and 7, VanGompel *et al.* teach an absorbent article having an elastic assembly (60) having first and second carrier (80, 82) layers made of nonwoven materials (column 14, lines 13-26).

As discussed previously, mere changes in dimensional parameters are not enough to patentably distinguish a claimed invention from the prior art. See *In re Aller*, supra.

Regarding claims 9 and 10, Migaku *et al.* teach that the elastic strands (15A) are attached to the diaper (10) by stretch bonding (page 3, lines 34-49).

Regarding claim 18, Migaku *et al.* teach that the garment (10) is a diaper (figure 2).

Claims 19-32 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over VanGompel *et al.* in view of Migaku *et al.*

VanGompel *et al.* teach an absorbent garment (20) comprising:

a first waist region (22);

a second waist region (24);

a crotch region (26) extending between the first and second waist regions (22, 24);

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a core assembly (32, 34, 36) located at least partially within the crotch region (26), the core assembly (36) comprising a substantially fluid-pervious body-facing topsheet (34), a substantially fluid-impervious backsheet (32) and an absorbent core (36) between the topsheet (34) and the backsheet (36);

at least one elastic assembly (60) located in at least one of the first waist region (22) and second waist region (24), the at least one elastic assembly (60) comprising:

a first nonwoven breathable carrier layer (52, 82, 84);

a second nonwoven breathable carrier layer (34);

an elastic layer (80) attached between the first and second carrier layers to impart elasticity to an elasticized portion of the garment (20), the elastic layer (80) comprising elastic strands (column 14, lines 14-49)(figure 1).

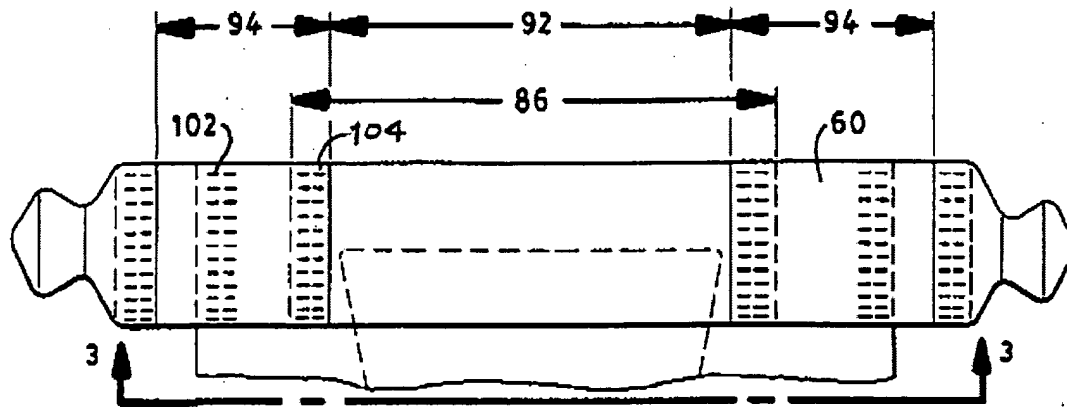


FIG. 2

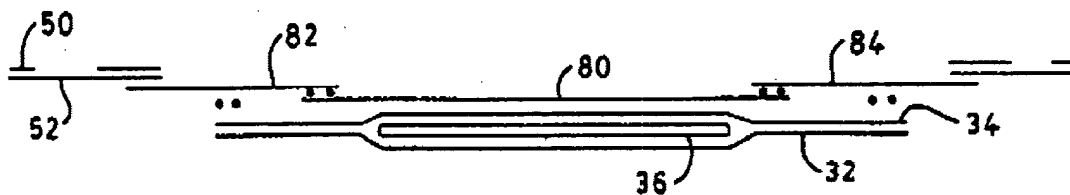


FIG. 3

VanGompel *et al.* do not teach that the first and second carrier layers are attached to one another only by a coating of adhesive on elastic strands.

Migaku *et al.* teach an absorbent article having carrier layers (11, 12) attached to each other in an elasticized area (15) only by a coating of adhesive on elastic strands (15A) between the two layers (page 4, line 63-page 5, line 20)(see figure 2).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to utilize the adhesive means of Migaku *et al.* to make the absorbent article of VanGompel *et al.* in order to provide an known means of assembling such an article.

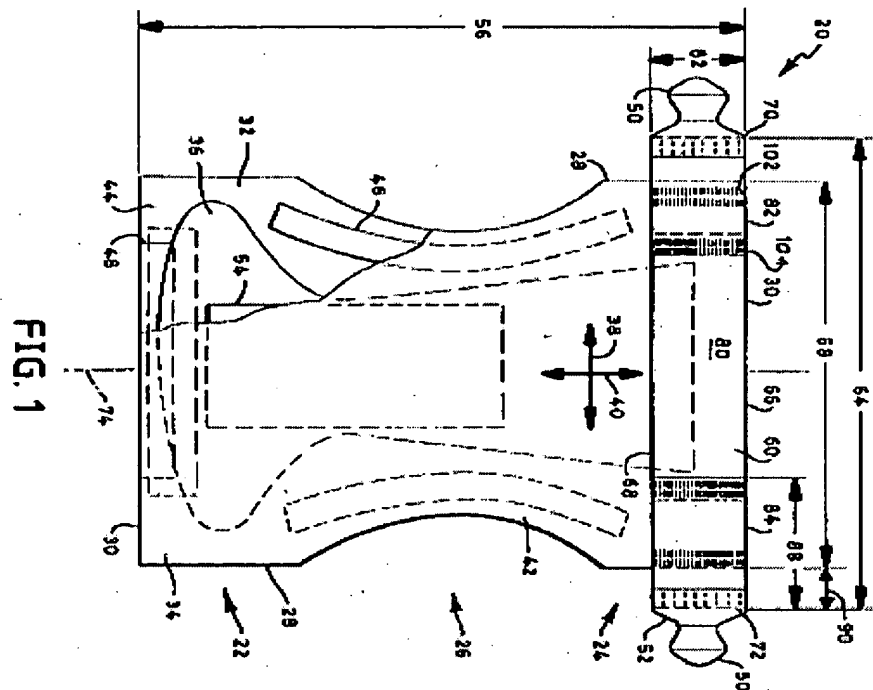


VanGompel *et al.* in view of Migaku *et al.* fail to teach the specific dimensions if the strand decitex (diameter), the strand spacing, elasticized portion thickness, number of corrugations per unit area, assembly width, basis weight of the carrier layers, total number of strands, thickness of the elastic portions, stretched and unstretched elastic strand length, density of adhesive coating and contracting force.

Generally, differences in ranges of dimensional parameters will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such test characteristic is critical. *In re Aller*, supra.

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, supra. Regarding the instant invention, the benefits of optimizing dimensions of the elastic strands and the elastic portion, as well as the number of elastic strands per area would have been known prior making the device of VanGompel *et al.* in view of Migaku *et al.*, making these values result-effective variables. One of ordinary skill in the art would have recognized that optimizing the dimensions and/or density of the elastic materials would provide the desired level of elasticity for user comfort and securement.

Regarding claim 18, VanGompel *et al.* teach that the garment (20) is a diaper (figure 1).



### *Allowable Subject Matter*

Claims 13-16 and 33-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The art of record fails to disclose or fairly suggest an elastic assembly as detailed in the rejections of claims 1 and 19, supra, further having first and second carrier layers bonded to each other at each cut.

***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 8-12 and 18 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 19-32 and 38, applicant's arguments filed 02 February 2006 have been fully considered but they are not persuasive.

Applicants assert that VanGompel *et al.* do not teach elastic assembly in a diaper because it is external to the diaper. This argument is not persuasive, because when used as intended in an assembled diaper on a wearer, the fit panel is between the topsheet and the body of a wearer. The places the fit panel in the diaper.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

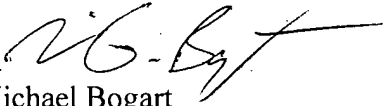
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Bogart  
13 April 2006

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

